DETAILED ACTION

Election/Restrictions

Newly submitted claim 9 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-5, drawn to a sealing composition.

Group II, claim(s) 9, drawn to a method of using the sealing composition.

The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The invention as claimed in Group I lack inventive concept over the combined teachings of US Patent 6,358,580 to Mang et al., (hereinafter Mang") or US patent 5,011,875 to Yamamoto et al., (hereinafter "Yamamoto and US Patent 6,136,873 to Hahle et al., (hereinafter "Hahle"), all of record, as discussed in the previous office action and set forth below.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for

prosecution on the merits. Accordingly, claim 9 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,358,580 to Mang et al., (hereinafter Mang") or US patent 5,011,875 to Yamamoto et al., (hereinafter "Yamamoto" in combination with US Patent 6,136,873 to Hahle et al., (hereinafter "Hahle") all of record.

The rejection stands as per reasons of record.

As discussed in the previous office action, both primary references disclose compositions suitable for use as sealing composition, which compositions swell upon exposure with water. The compositions comprise a rubbery matrix and a particulate water absorbing material dispersed in the matrix. The rubbery matrix disclosed in both references is a crosslinked elastomeric matrix (see Mang, column 3, line 59 to column 4, line 5; Yamamoto, column 1, lines 51-61 and examples disclosing vulcanization of rubber). Both references further expressly disclose foams of low density obtained from the compositions. The Yamamoto reference discloses various water absorbent polymers suitable for his invention, but does not expressly disclose the polymers that contains the claimed polyalkylene glycole acrylate units. Similarly, while the Mang reference disclose acrylic based water absorbent polymers (in particulate form), the reference does not disclose the specifically claimed polymers containing the claimed polyalkylene glycole acrylate units. Water absorbable particulate material of the small

size (fully corresponding to the claimed size) are known in the art, as for example, per disclosure of Hahle, which crosslinked particulate materials (polymers that include the claimed polyalkylene glycole acrylate) exhibit improved absorbency and are suitable for many applications where hifg liquid absorbence and liquid retention is desired. See specifically columns 3-4 disclosing the polymer suitable for the invention,including copolymers containing co-monomer (b), including comonomers disclosed as methacrylates of ethylene glycol (column 4, lines 4-9), etc, and which can be present in the polymer in the amounts of up to 50 mole % (column 6, line 15). Those copolymer fully correspond to the claimed polymers. Therefore, it would have been obvious to use the known water absorbent particles (polymers that include polyalkylene glycole acrylate) disclose in Hahle (and which fully correspond to the claimed particles in both the size and the chemical structure) for their known function as highly absorbent materials in compositions of both Yamamoto of Mang (which compositions utilize absorbent polymers and specifically seek high water absorption properties in the final products) with reasonable expectation of success, absent showing of unexpected results that can be attributed to the use of the claimed absorbent particles (which, as discussed above, are KNOWN for their function as absorbents).

Response to Arguments

Applicant's arguments filed 8-27-2008 have been fully considered but they are not persuasive. The applicants argue that the secondary references do not disclose the claimed crosslinked polymer. As discussed above, the Hahle reference does disclose

crosslinked particulate polymer that fully reads on the claimed polymer. (the rejection over Stockhausen is withdrawn).

As discussed in the previous office action, the present application lacks any comparative examples illustrating alleged superior and unexpected results that are achieved by the claimed invention. The declaration of Dr. Mang is noted, however the results presented in the declaration are not considered sufficient to overcome the outstanding rejection. Specifically, while the results presented in the declaration for the inventive examples appear to be superior, it is not possible to assert it superiority as compared to the commercial product for several reaosm, mainly, it is not apparent what the commercial examples correspond to. It is noted that the provided description of the two products is in a foreign language (German), which, by itself is not an appropriate evidentiary submission to the USPTO, and to the extent this language is understood by the examiner, the datasheets for those product do not provide chemical identity of those products other that it is neutralized polyavcrylic acid / sodium polyacrylate. That is, it is not clear what the actual product is, whether it is a 100% neutralized polyacrylic acid homopolymer, or it contains additional comonomers, etc. To the extent that the Ki-Gel is concerned, the desription of this product, while in English, provides no decrpiption of its chemical identity. In addition, it is noted that the illustrative example according to the instant invention used in the declaration is a polymer containing nearly 100% of the claimed non-ionic hydrophilic methacrylate, while the claimed invention include polymer having as low as 30 % of such monomeric units. And, the comparative data is presented for the crosllinked absorbing polymer itself, not the claimed composition

having the matrix of rubber. Thus, the results presented in the declaration are not considered to be probative evidence of unexpected results.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Irina S. Zemel/
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